

Chapter 585: IDENTIFICATION OF FISH SPAWNING AREAS AND DESIGNATION OF SALMONID SPAWNING AREAS

SUMMARY: This rule sets forth methods for identification of fish spawning areas in Class B waters and designation of salmonid spawning areas in Class C waters.

- 1. Identification of Fish Spawning Areas.** Prior to the licensing or relicensing of any wastewater discharge which may affect the dissolved oxygen content of Class B or C waters, the Department shall request the Commissioner of the Department of Inland Fisheries and Wildlife to identify existing and potential fish spawning areas in the receiving water, according to section 2 of this rule, in which higher concentrations of dissolved oxygen are required to ensure spawning, egg incubation, and survival of early life stages of fish species. In Class B waters that have been identified as fish spawning areas, no activity may cause the dissolved oxygen concentration to fall below a 7-day mean of 9.5 parts per million or a 1 day minimum of 8.0 parts per million during the period October 1 to May 14 of the following year.
- 2. Methods of identification.** The following methods (by priority) shall be considered by the Department to document fish spawning areas.
 - (1) Identification of areas observed by fishery biologists as being utilized by any of these species for spawning.
 - (2) Identification of areas as spawning habitat in habitat inventories, river reports or agency files.
 - (3) Identification of research findings for the same species in other geographical areas, from scientific literature and Habitat Suitability Models for presently existing species.
 - (4) Identification based upon professional opinion of a certified fishery biologist experienced in salmonid ecology.
- 3. Designation of salmonid spawning areas.** In Class C waters identified as salmonid spawning areas pursuant to sections 1 and 2 of this rule, the Department shall determine whether or not existing levels of dissolved oxygen in those waters are sufficient to support spawning by comparison with U.S. EPA dissolved oxygen criteria for spawning. If existing dissolved oxygen levels exceed EPA criteria, the Department shall then designate such areas as salmonid spawning areas. No activity may cause the dissolved oxygen in these areas to fall below EPA criteria for the period October 1 to May 14 of the following year. Any person may provide the Department with information pertinent to the identification and designation of salmonid spawning areas using the methods in Section 2.

If ambient levels of dissolved oxygen are lower than the EPA criteria, then corrective action must be taken or a Use Attainability Analysis (UAA) must be conducted according to the requirements of the federal Clean Water Act and 40 CFR part 131.1.

NOTE: The first part of a UAA is a study to determine whether or not designated uses are met. If they are, despite the fact that the criteria are not, then new site-specific criteria can be set at existing ambient levels. If uses are not met then the Legislature can, after reviewing social and economic factors following a public participation process, set subcategories of uses which require different criteria. Existing uses must be maintained and protected.

- 4. Periodic Review.** Designated salmonid spawning areas may be reviewed and modified by the Department during any reissuance of a wastewater discharge license, or as new information becomes available, in accordance with public participation and other requirements of Section 303c of the Clean Water Act and 40 CFR, part 131.

AUTHORITY: 38 M.R.S.A. Sections 343-A, 464 and 465

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